

October 13, 2006

Steve M. Mihalchick, Administrative Law Judge  
Office of Administrative Hearings  
Suite 1700  
100 Washington Square  
Minneapolis, Minnesota 55401

Re: In the Matter of a Joint LEPGP Site Permit, HVTL Route Permit and Pipeline  
(Partial Exemption) Route Permit Application for the Mesaba Energy Project  
MPUC Docket No. E-6472/GS-06-668  
OAH Docket No. 12-2500-17512-2

Dear Judge Mihalchick:

This letter is in response to the comments submitted by MCEA with regard to your request for briefing on the role of the final EIS. The Department of Commerce notes that the arguments in Excelsior's letter regarding the "Role of EIS in Contested Case Proceeding" correctly reference Chapter 4400 as the chapter of the Minnesota Rules that is relevant to this EIS.

In contrast, MCEA's arguments rely inappropriately on Minnesota R. Chapter 4410, and fail to recognize that Minn. R. Chapter 4410 is not applicable to the Mesaba Project Environmental Impact Statement ("EIS"). The basis for its reliance on Chapter 4410 is Minn. R. 4410.4400 (Mandatory EIS Categories), subp. 3, electric generating facilities, which states that "For construction of a large electric power generating plant, environmental review shall be conducted according to parts 4410.7010 to 4410.7070 and chapter 4400." MCEA's letter references Minn. R. 4410.7050 and 4410.7060.

However, the EIS is not being prepared pursuant to these rules. These sections apply to environmental review associated with certificate of need proceedings. Minnesota Rule 4410.7010 notes in subpart 1 that "Parts 4410.7010 to 4410.7070 apply to any high voltage transmission line project or large electric power generating plant project *for which a certificate of need or other need determination is required* by the Public Utilities Commission under Minnesota Statutes § 216B.243 or § 216B.2425, and applicable rules." (Emphasis added.)

There is no certificate of need or other need determination required by the Commission under these statutes and rules for this project because the Minnesota Legislature created an exception to the need requirement for an innovative energy project pursuant to Minn. Stat. § 216B.1694. Excelsior Energy's application for the Mesaba Project clearly states that it is

applying as an innovative energy project pursuant to Minn. Stat. § 216B.1694 and is exempt from requirements for a certificate of need under Minn. Stat. § 216B.243.

Although MCEA refers to Minn. Stat. § 216B.1694, it fails to include the portion that clarifies that the applicable sections in the Minnesota rules are Minn. R. Chapter 4400. Minnesota Statute § 216B.1694, subd. 2(a)(1) provides that an innovative energy project “is exempted from the requirements for a certificate of need under section 216B.243, for the generation facilities, and transmission infrastructure associated with the generation facilities, but is subject to all applicable environmental review and permitting procedures of sections 116C.51 to 116C.69.” Sections 116C.51 to 116C.69 are the Minnesota Power Plant Siting Act and Minnesota Rules Chapter 4400 are the rules implementing the Power Plant Siting Act.

Finally, as noted in a footnote of the Department’s October 6, 2006 letter, according to Minn. R. 4400.1700, subp. 12, the requirements of Chapter 4410 of the Minnesota Rules do not apply to the preparation or consideration of an EIS for a large power generating plant or a high voltage transmission line except as provided in Chapter 4400.

Therefore, MCEA’s comments as they relate to Chapter 4410 are not relevant and should be disregarded.

Respectfully submitted,

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**AFFIDAVIT OF SERVICE BY U.S. MAIL**

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STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

*Pat Silberbauer*, being first duly sworn, deposes and says that at the City of St. Paul, County of Ramsey, State of Minnesota, on the 13th day of October, 2006, she served the attached Letter to Judge Mihalchick from Karen Hammel by depositing in the United States Mail at said city, a true and correct copy thereof, properly enveloped, with prepaid first class postage, and addressed to:

All persons on the attached service list

\_\_\_\_\_  
*Pat Silberbauer*

Subscribed and sworn to before me on  
October 13, 2006.

\_\_\_\_\_  
Notary Public

**E-06-668**

**Excelsior and Mesaba Energy**

**10/4/06**

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